

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

RICHARD L. DOPP,

Plaintiff,

v.

JUSTIN JONES, et al.,

Defendants.

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Case No. CIV-14-961-D

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing *pro se*, has filed this action under 42 U.S.C. 1983 alleging various violations of his constitutional rights. Pursuant to an order entered by United States District Judge Timothy D. DeGiusti, this matter has been referred to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C § 636(b)(1)(B).

On November 5, 2014, Plaintiff filed an Amended Complaint (ECF No. 14). District Judge Timothy DeGiusti entered an Order for Payment of Inmate Filing Fee (ECF No. 15) giving Plaintiff until December 1, 2014 to pay the \$4.23 initial partial payment. This Order also re-referred the matter to the undersigned magistrate judge. On November 24, 2014, Plaintiff filed a Motion for Order (ECF No. 16) requesting that the Court order the Department of Corrections to cooperate with this Court's order.

As of this date, Plaintiff has failed to pay the filing fee as required. Thus, the action is subject to dismissal without prejudice to re-filing. Local Civil Rule 3.4(a);

See Cosby v. Meadors, 351 F.3d 1324, 1326-33 (10th Cir. 2003) (upholding dismissal of civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay). *See also Kennedy v. Reid*, No. 06-1075, 208 Fed. Appx. 678 (10th Cir. Dec. 13, 2006) (finding no abuse of discretion in district court's dismissal without prejudice of section 1983 action due to litigant's failure to timely pay initial filing fee); *Campanella v. Utah County Jail*, Nos. 02-4183, 02-4215, 02-4235, 78 Fed. Appx. 72, 73 (10th Cir. Oct. 10, 2003) (same). Moreover, under Fed. R. Civ. P. 41(b) a district court may dismiss an action because the plaintiff fails to comply with a court order requiring partial payments. *Cosby*, 351 F.3d at 1327.

Further, the Court has no jurisdiction to issue an order in this conditionally filed action. Plaintiff is responsible for acquiring the information required to support his application to appear *in forma pauperis*. The Court finds that the Plaintiff's Motion for Order (ECF No. 16) should be **DENIED**.

RECOMMENDATION

In light of the forgoing, the undersigned hereby recommends that this action be **DISMISSED** without prejudice unless Plaintiff pays the initial partial filing fee of **\$4.23** within twenty (20) days of any order adopting this Report and Recommendation. Plaintiff is advised that any objections to this Report and Recommendation must be filed with the Clerk of this Court on or before **January 12, 2015**, in accordance with 28 U.S.C § 636 and Federal Rule of Civil Procedure 72.

Failure to make timely objection to this Report and Recommendation waives the right to appellate review of both the factual findings and the legal issues decided herein.

Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the Magistrate Judge in the captioned matter.

ENTERED on December 24, 2014.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE